

AMENDED IN SENATE JUNE 3, 2010

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE JANUARY 21, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 960

Introduced by Assembly Member V. Manuel Perez

**(Coauthors: Assembly Members Block, Emmerson, Hill, Nava,
Nestande, Skinner)**

(Coauthors: Senators Harman and Leno)

February 26, 2009

~~An act to amend Section 12370 of the Penal Code, relating to body armor, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 2069 and 2099 of the Fish and Game Code, and to amend Section 25524 of the Public Resources Code, relating to renewable energy resources, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as amended, V. Manuel Perez. ~~Body armor. Renewable energy resources: powerplant siting: California Endangered Species Act: mitigation measures.~~

(1) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity

of 50 megawatts or more, and any facilities appurtenant thereto. Existing law requires the Energy Commission to establish a process for certain applicants for certification of a solar thermal powerplant that are proposed to be constructed in the planning area for the Desert Renewable Energy Conservation Plan, as defined, that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist the Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification.

This bill additionally would require the Energy Commission to establish a process for certain applicants for certification of a geothermal powerplant that is proposed to be constructed in the planning area for the Desert Renewable Energy Conservation Plan, that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist the Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification.

(2) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA states that state agencies should not approve projects, as defined, that would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of the species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. CESA further declares that in the event specific economic, social, or other conditions make infeasible these alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided. CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if certain requirements are met. CESA authorizes the department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and

photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

This bill additionally would authorize the department to design and implement mitigation actions for proposed wind and geothermal powerplants in the planning area of the Desert Renewable Energy Conservation Plan and would eliminate certain requirements for participation in the department's mitigation actions.

(3) Existing law establishes the Renewable Energy Resources Development Fee Trust Fund as a continuously appropriated fund in the State Treasury to serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects, as defined, to deposit fees sufficient to complete mitigation actions established by the department and thereby meet their requirements pursuant to CESA or the certification authority of the Energy Commission. The definition of eligible projects is limited to certain solar thermal powerplants and photovoltaic powerplants proposed to be constructed in the planning area of the Desert Renewable Energy Conservation Plan.

This bill would expand the definition of eligible projects to include wind powerplants and geothermal powerplants proposed to be constructed in the planning area of the Desert Renewable Energy Conservation Plan. By expanding the purposes for which moneys in this continually appropriated fund may be used, this bill would make an appropriation.

~~Existing law provides that any person who has been convicted of a violent felony who purchases, owns, or possesses body armor, as defined in the California Code of Regulations, except as authorized, is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or 2 or 3 years. However, the court, in *People v. Saleem* (Cal.App. 2nd Dist., Dec. 17, 2009, B204646), held that this provision, with body armor so defined, is unconstitutionally vague in violation of due process.~~

~~This bill would revise the definition of body armor for these purposes, as specified:~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program:~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2069 of the Fish and Game Code is
2 amended to read:

3 2069. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Desert Renewable Energy Conservation Plan” means the
6 completed conservation plan in the Mojave and Colorado Desert
7 regions adopted pursuant to the Natural Community Conservation
8 Planning Act (Chapter 10 (commencing with Section 2800)), and
9 covers the geographical area described in Section 4 of, and depicted
10 in Exhibit A to, the “Draft Planning Agreement by and among
11 California Department of Fish and Game, California Energy
12 Commission, United States Bureau of Land Management, and
13 United States Fish and Wildlife Service for the Desert Renewable
14 Energy Conservation Plan,” document REAT-1000-2009-034,
15 dated October 2009.

16 (2) “Energy Commission” means the State Energy Resources
17 Conservation and Development Commission.

18 (b) The department, in consultation with the Energy Commission
19 and, to the extent practicable, the United States Fish and Wildlife
20 Service and the United States Bureau of Land Management, may
21 design and implement actions, including the purchase of land and
22 conservation easements, to protect, restore, or enhance the habitat
23 of plants and wildlife that can be used to fully mitigate the impacts
24 of the take of endangered species, threatened species, or candidate
25 species, for purposes of paragraph (2) of subdivision (b) of Section
26 2081 and Chapter 6 (commencing with Section 25500) of Division
27 15 of the Public Resources Code, resulting from solar thermal and,
28 photovoltaic, wind, and geothermal powerplants in the Desert
29 Renewable Energy Conservation Plan planning area that meet each
30 of the following requirements:.

31 (1) ~~Either the Energy Commission determines that the~~
32 ~~application for certification was complete by February 1, 2010, or~~
33 ~~the local government in which the project is located has determined~~

1 the project permit application is complete or has issued a notice
2 of preparation of an environmental impact statement pursuant to
3 Division 13 (commencing with Section 21000) of the Public
4 Resources Code by February 1, 2010.

5 (2) The developer or owner of the proposed powerplant or
6 generation facility has applied for, and would qualify for, funding
7 under the federal American Recovery and Reinvestment Act of
8 2009 (Public Law 111-5). For purposes of this subparagraph,
9 “funding” means a loan guarantee made pursuant to Section 406
10 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy
11 property in lieu of a tax credit provided pursuant to Section 1603
12 of Division B of the act, which division is titled the American
13 Recovery and Reinvestment Tax Act of 2009.

14 (c) A mitigation action may only be used for the mitigation
15 purposes described in subdivision (b) if it meets one of the
16 following conditions:

17 (1) The department has implemented the mitigation action and
18 determined that the action has resulted in the protection, restoration,
19 or enhancement of the habitat of one or more species that are
20 proposed to be covered by the Desert Renewable Energy
21 Conservation Plan, and that are located in the planning area, and,
22 based upon that determination, can be used, for purposes of
23 paragraph (2) of subdivision (b) of Section 2081, to fully mitigate
24 the impacts of the take of the species from one or more projects
25 identified in subdivision (b).

26 (2) The mitigation action is included in an interim mitigation
27 strategy for projects identified in subdivision (b). An interim
28 mitigation strategy pursuant to this paragraph shall be developed
29 by the department, in consultation with the Energy Commission
30 and, to the extent practicable, the United States Fish and Wildlife
31 Service and the United States Bureau of Land Management, and
32 shall include all of the following:

33 (A) A description of specific mitigation areas and specific
34 actions on public or private land within the Desert Renewable
35 Energy Conservation Plan planning area that are to be
36 implemented, including a focus on habitat preservation, while also
37 including enhancement or restoration actions that will do all of the
38 following:

1 (i) Contribute to the conservation of each candidate species,
2 threatened species, or endangered species for which a permit is
3 issued.

4 (ii) Adopt a regional planning perspective that provides a
5 foundation for, or that will complement, any conservation strategy
6 to be developed for the Desert Renewable Energy Conservation
7 Plan.

8 (iii) Implement mitigation actions within a reasonable period
9 of time relative to the impact to the affected candidate species,
10 threatened species, or endangered species, including, where
11 feasible, advance mitigation. For purposes of this clause, “advance
12 mitigation” means mitigation implemented before, and in
13 anticipation of, future impacts to natural resources.

14 (iv) Include a description of the species that would be benefited
15 by each mitigation action and how it would be benefited.

16 (B) A cost estimate for each action, whether on public or private
17 land, using total cost accounting, including, as applicable, land
18 acquisition costs, conservation easement costs, monitoring costs,
19 transaction costs, restoration costs, the amount of a nonwasting
20 endowment account for land management or easement stewardship
21 costs by the department or other management entity, and
22 administrative costs.

23 (d) The interim mitigation strategy shall be based on best
24 available science and shall be reviewed by the Desert Renewable
25 Energy Conservation Plan independent science advisors. The
26 department shall seek and consider comments from the Desert
27 Renewable Energy Conservation Plan independent science advisors
28 in the design and location of each mitigation action implemented
29 pursuant to this section. If the department elects to not incorporate
30 comments of the independent science advisors into mitigation
31 actions, the department shall explain the reasons for that decision
32 in writing.

33 (e) The interim mitigation strategy shall be completed by the
34 department no later than 60 days following the operative date of
35 the act adding this section.

36 (f) (1) Nothing in this section shall modify the requirements of
37 Section 2081, including the requirement to, where feasible, avoid
38 and minimize impacts, the requirements of Division 13
39 (commencing with Section 21000) of, or the requirements of
40 Chapter 6 (commencing with Section 25500) of Division 15 of,

1 the Public Resources Code, or affect the existing authority of the
2 department to authorize mitigation actions to comply with this
3 chapter.

4 (2) With respect to the Energy Commission, in the case of an
5 applicant seeking certification for a solar thermal ~~power plant~~ *or*
6 *geothermal powerplant* pursuant to Chapter 6 (commencing with
7 Section 25500) of Division 15 of the Public Resources Code, or a
8 lead agency, as defined in Section 21067 of the Public Resources
9 Code, in the case of an applicant seeking approval of a photovoltaic
10 *or wind powerplant, or a solar thermal powerplant or geothermal*
11 *powerplant with a generating capacity of less than 50 megawatts,*
12 the sole effect of a mitigation action described in subdivision (c),
13 and paid for through the deposit of fees as described in Section
14 2099, is to relieve an applicant of the obligation to directly take
15 actions which are taken instead by the department or its contractor
16 or designee pursuant to subdivision (b) to meet the applicant's
17 obligations with respect to the powerplant's impacts to species
18 and habitat. The mitigation action and deposit of fees shall not
19 relieve the applicant of any other obligation, or the Energy
20 Commission or the lead agency of any of its existing requirements
21 of Division 13 (commencing with Section 21000) of, or the
22 requirements of Chapter 6 (commencing with Section 25500) of
23 Division 15 of, the Public Resources Code to analyze, avoid,
24 minimize, or mitigate impacts to species and habitat, or make the
25 findings required by those statutes.

26 (g) The mitigation actions implemented pursuant to this section
27 shall be incorporated into the Desert Renewable Energy
28 Conservation Plan upon the finalization of the plan, to the extent
29 the mitigation actions are consistent with the plan's conservation
30 strategy.

31 *SEC. 2. Section 2099 of the Fish and Game Code is amended*
32 *to read:*

33 2099. (a) For purposes of this section, the following terms
34 have the following meanings:

35 (1) "Eligible project" means a solar thermal powerplant ~~or,~~
36 photovoltaic powerplant, *wind powerplant, or geothermal*
37 *powerplant* meeting the requirements of paragraphs (1) and (2) of
38 subdivision (b) of Section 2069.

39 (2) "Energy Commission" means the State Energy Resources
40 Conservation and Development Commission.

(b) (1) The Renewable Energy Resources Development Fee Trust Fund is hereby established in the State Treasury. The department shall collect a fee from the owner or developer of an eligible project that elects to use mitigation actions developed and approved by the department pursuant to Section 2069, and all moneys received for purposes of mitigation actions pursuant to Section 2069 shall be deposited in the fund and shall be held in trust and be expended solely for the purposes of, and in conformity with, that section, applicable permit or certification requirements for eligible projects, and any contractual agreement between the Energy Commission or department and the owner or developer of an eligible project. The department may contract with, or award grants to, third parties to implement mitigation actions in conformity with Section 2069 and this section.

(2) Upon direction by the department, the Controller shall create any accounts or subaccounts within the fund that the department determines are necessary or convenient to facilitate management of the fund.

(3) The fund shall serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects to deposit fees to complete mitigation actions meeting the conditions of subdivision (c) of Section 2069 and for the purpose of meeting the requirements of this chapter or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the department, without regard to fiscal years, for the purposes enumerated in this section and Section 2069. An expenditure shall not be made from the fund except as authorized by the department.

(4) The sum of ten million dollars (\$10,000,000) is hereby transferred, as a loan, from the Renewable Resource Trust Fund to the fund. This loan shall be repaid from the fund to the Renewable Resource Trust Fund no later than December 31, 2012. The department shall use these funds, pursuant to paragraph (1) of subdivision (c) of Section 2069, to purchase mitigation lands or conservation easements, and to cover related restoration, monitoring, and transaction costs incurred in advance of the receipt of fees pursuant to paragraph (5) and to cover the department's administrative costs for the program.

(5) A developer or owner of an eligible project that elects to use mitigation actions developed and authorized by the department pursuant to Section 2069 shall remit fees to the department for deposit into the fund for those mitigation actions in an amount that reflects the determination by the Energy Commission, with respect to a solar thermal powerplant *or geothermal powerplant with a generating capacity of 50 megawatts or more*, or the department, with respect to a solar photovoltaic powerplant *or wind powerplant, or a solar thermal powerplant or geothermal powerplant with a generating capacity of less than 50 megawatts*, of the costs attributable to the mitigation actions that meet the standards of this chapter. The amount of fees to be paid by a developer or owner of an eligible project to meet the standards of this chapter shall be calculated on a per acre basis, using total cost accounting, and shall include, as applicable, land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, the amount of a nonwasting endowment account for land management or easement stewardship costs by the department or other management entity, and administrative costs and funds sufficient to repay any expenditure of state funds made pursuant to paragraph (4). To ensure the funds deposited pursuant to this section are sufficient to meet the standards of this chapter, the project developer or owner, in addition to payment of those funds, shall provide security, in a form and amount, not to exceed 5 percent of the amount of the funds, excluding any portion of the funds to be used for a nonwasting endowment, to be determined by the Energy Commission, with respect to a solar thermal powerplant *or geothermal powerplant with a generating capacity of 50 megawatts or more*, or to be determined by the department, with respect to a solar photovoltaic powerplant *or wind powerplant, or a solar thermal powerplant or geothermal powerplant with a generating capacity of less than 50 megawatts*.

(c) The department shall monitor the implementation of the mitigation actions and the progress of the construction of the eligible projects. The department shall report all deposits, and the source of those deposits, on its Internet Web site. The department shall also report all expenditures from the fund on its Internet Web site and identify the mitigation activities or programs that each expenditure funded and its relationship to the permitted project. The Energy Commission, with respect to a solar thermal

1 powerplant, and the department, with respect to a solar photovoltaic
2 powerplant, shall ensure that moneys paid pursuant to this section
3 are used only for purposes of satisfying the standards of paragraph
4 (2) of subdivision (b) of Section 2081. Where moneys are used to
5 fund mitigation actions, including the acquisition of lands or
6 conservation easements, or the restoration of lands, that use shall
7 be in addition to, and not duplicative of, mitigation obtained
8 through any other means.

9 (d) The department and the Energy Commission shall not allow
10 any use of the interim mitigation strategy subsequent to a
11 determination by the department that the time and extent of
12 mitigation actions are not being implemented in rough proportion
13 to the impacts of those projects. The department shall reinstitute
14 the use of the interim mitigation strategy when the department
15 determines the rough proportionality between mitigation actions
16 and impacts of eligible projects has been reestablished by the
17 completion of additional mitigation actions.

18 *SEC. 3. Section 25524 of the Public Resources Code is*
19 *amended to read:*

20 25524. (a) “Qualified applicant” means an applicant for
21 certification of a solar thermal powerplant ~~that meets each of the~~
22 ~~following requirements:~~ *or geothermal powerplant that is proposed*
23 *to be constructed in the planning area for the Desert Renewable*
24 *Energy Conservation Plan, as defined in Section 2069 of the Fish*
25 *and Game Code.*

26 ~~(1) The commission has determined that the application for~~
27 ~~certification was completed by February 1, 2010.~~

28 ~~(2) The solar thermal powerplant is proposed to be constructed~~
29 ~~in the planning area for the Desert Renewable Energy Conservation~~
30 ~~Plan, as defined in Section 2069 of the Fish and Game Code.~~

31 ~~(3) The developer or owner of the proposed solar thermal~~
32 ~~powerplant has applied for, and would qualify for funding under~~
33 ~~the federal American Recovery and Reinvestment Act of 2009~~
34 ~~(Public Law 111-5). For purposes of this paragraph, “funding”~~
35 ~~includes a loan guarantee made pursuant to Section 406 of the act~~
36 ~~(42 U.S.C. Sec. 16516) or a grant for specified energy property in~~
37 ~~lieu of a tax credit provided pursuant to Section 1603 of Division~~
38 ~~B of the act, which division is titled the American Recovery and~~
39 ~~Reinvestment Tax Act of 2009.~~

1 (b) The commission shall establish a process to allow a qualified
2 applicant to elect to pay additional fees to be used by the
3 commission to contract with a third party, or more than one third
4 party, to assist commission staff in performing the analysis
5 otherwise performed by commission staff in determining whether
6 or not to issue a certification. The commission shall retain
7 discretion as to when this option will be offered to a qualified
8 applicant.

9 (c) The amount of the fees charged by the commission pursuant
10 to this section shall be conditioned upon the qualified applicant
11 agreeing to that amount and electing to proceed with the retention
12 of the third party or parties pursuant to subdivision (b).

13 (d) All fees paid by a qualified applicant shall be used
14 exclusively for analysis of that applicant's application for
15 certification.

16 ~~SECTION 1. Section 12370 of the Penal Code is amended to~~
17 ~~read:~~

18 ~~12370. (a) A person who has been convicted of a violent~~
19 ~~felony, as defined in subdivision (c) of Section 667.5, under the~~
20 ~~laws of the United States, the State of California, or any other state,~~
21 ~~government, or country, who purchases, owns, or possesses body~~
22 ~~armor, as defined in subdivision (f), except as authorized under~~
23 ~~subdivision (b), is guilty of a felony, punishable by imprisonment~~
24 ~~in a state prison for 16 months, or two or three years.~~

25 ~~(b) A person whose employment, livelihood, or safety is~~
26 ~~dependent on the ability to legally possess and use body armor,~~
27 ~~who is subject to the prohibition imposed by subdivision (a) due~~
28 ~~to a prior violent felony conviction, may file a petition with the~~
29 ~~chief of police or county sheriff of the jurisdiction in which he or~~
30 ~~she seeks to possess and use the body armor for an exception to~~
31 ~~this prohibition. The chief of police or sheriff may reduce or~~
32 ~~eliminate the prohibition, impose conditions on reduction or~~
33 ~~elimination of the prohibition, or otherwise grant relief from the~~
34 ~~prohibition as he or she deems appropriate, based on the following:~~

35 ~~(1) A finding that the petitioner is likely to use body armor in~~
36 ~~a safe and lawful manner.~~

37 ~~(2) A finding that the petitioner has a reasonable need for this~~
38 ~~type of protection under the circumstances.~~

39 ~~In making its decision, the chief of police or sheriff shall consider~~
40 ~~the petitioner's continued employment, the interests of justice, any~~

1 relevant evidence, and the totality of the circumstances. It is the
2 intent of the Legislature that law enforcement officials exercise
3 broad discretion in fashioning appropriate relief under this
4 paragraph in cases in which relief is warranted. However, this
5 paragraph may not be construed to require law enforcement
6 officials to grant relief to any particular petitioner. Relief from this
7 prohibition does not relieve any other person or entity from any
8 liability that might otherwise be imposed.

9 (e) The chief of police or sheriff shall require, as a condition of
10 granting an exception under subdivision (b), that the petitioner
11 agree to maintain on his or her person a certified copy of the law
12 enforcement official's permission to possess and use body armor,
13 including any conditions or limitations.

14 (d) Law enforcement officials who enforce the prohibition
15 specified in subdivision (a) against a person who has been granted
16 relief pursuant to subdivision (b), shall be immune from any
17 liability for false arrest arising from the enforcement of this
18 subdivision unless the person has in his or her possession a certified
19 copy of the permission granting the person relief from the
20 prohibition, as required by subdivision (c). This immunity from
21 liability does not relieve any person or entity from any other
22 liability that might otherwise be imposed.

23 (e) For purposes of this section only, "violent felony" refers to
24 the specific crimes listed in subdivision (e) of Section 667.5, and
25 to crimes defined under the applicable laws of the United States
26 or any other state, government, or country that are reasonably
27 equivalent to the crimes listed in subdivision (e) of Section 667.5.

28 (f) For purposes of this section, "body armor" means any bullet
29 resistant material intended to provide ballistic and trauma
30 protection for the person wearing the body armor.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 ~~SEC. 3. This act is an urgency statute necessary for the~~
2 ~~immediate preservation of the public peace, health, or safety within~~
3 ~~the meaning of Article IV of the Constitution and shall go into~~
4 ~~immediate effect. The facts constituting the necessity are:~~

5 ~~In order to protect the public and law enforcement in California~~
6 ~~from current and ongoing crimes involving the possession and use~~
7 ~~of body armor by persons previously convicted of violent felonies;~~
8 ~~it is necessary that this legislation take effect immediately.~~

O